

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. _____
)	
ALLAN BARASH, DEBRA GUZMAN,)	
and ANDREW GOODRICH)	
)	
Defendants.)	

COMPLAINT

This civil action is brought in the name of the State of Tennessee (“State”), by and through Paul G. Summers, the Attorney General (“Attorney General”), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1), 8-6-109(b)(1) and all common law powers and duties of the Attorney General. David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance (“Division”) has requested that this civil action against the Defendants be commenced by the Attorney General.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the provision of Tenn. Code Ann. § 47-18-108. Venue is proper in Davidson County because it is a county in which Defendants conduct or have conducted business. See Tenn. Code Ann. § 47-18-108(a)(3). Defendants have waived the ten (10) days notice of contemplated legal actions as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

PARTIES

2. The Plaintiff is the State of Tennessee. Paul G. Summers is the duly appointed Attorney General of Tennessee and, as such, is authorized to enforce the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*

3. Defendants, Allan Barash, Debra Guzman, and Andrew Goodrich are **all natural persons who live in Michigan, but have done business in the State of Tennessee through a company called Long Distance Services, Inc., ("LDSI"). LDSI was a corporation organized under the laws of the State of Delaware with its principal place of business at 50 W. Big**

Beaver Road, Troy, Michigan 48084.

FACTUAL ALLEGATIONS

Upon information and belief, the State alleges as follows:

4. LDSI was a long-distance telephone carrier engaged in the business of reselling long distance telephone service. It provided long distance telephone service to its customers by purchasing the necessary facilities at wholesale prices from underlying facilities-based carriers and reselling these services at retail prices to its customers. LDSI's business consisted entirely of soliciting new long distance customers, switching the long distance carrier of these customers to itself, and reselling long distance telephone service to them.

5. At all times relevant to this complaint, defendant Allan Barash, was the president, 90% shareholder, and primary decision-maker for LDSI.

6. At all times relevant to this complaint, defendant Debra Guzman, Allan Barash's wife, worked as the bookkeeper for LDSI.

7. At all times relevant to this complaint, defendant Andrew Goodrich, worked as the operations manager for LDSI, which included overseeing all LDSI employees, LDSI's customer service department, and its marketing operations. Defendants Barash, Guzman, and Goodrich all significantly contributed to planning and executing the unfair and deceptive practices described in this Complaint.

8. Since at least April 18, 1995, Defendants, through their work for LDSI, caused LDSI and others acting on its behalf, to switch Tennessee consumers' long distance telephone carriers from the IXC of their choice to LDSI, without the consumers' authorization--a practice commonly referred to as "slamming".

9. Defendants, through LDSI, then provided long distance telephone service to these slammed consumers and billed them for this service at rates often substantially higher than the rate of the individual consumer's true long distance carrier.

10. In many instances, Defendants, when contacted by these consumers, claimed to have an LOA signed by the consumer, but these LOAs were never produced, or, if produced, were forged in the name of the consumer.

11. In many instances, Defendants refused to refund or to rerate these slammed

consumers for long distance charges billed by LDSI to them.

12. Thousands of LDSI "customers" complained to the company that they had been slammed, yet Defendants never took any independent steps to determine which of its "customers", if any, had "voluntarily" selected LDSI as their long distance carrier and which were the victims of forged LOAs.

13. Defendants also solicited LOAs through prize promotions. Defendants caused LDSI marketing agents to distribute box contest displays in retail shops, like restaurants and dry cleaners, throughout the State of Tennessee.

14. These displays generally consisted of a cardboard poster depicting the prize, e.g., a Ford Explorer vehicle, a box for contest entry forms, and the entry forms themselves. Defendants used LOAs as contest entry forms. In addition, the display prominently featured the contest prize, but devoted little space to the long distance aspect of the transaction and, in fact, failed to disclose LDSI's long distance rates. Most entrants believed that they were simply entering a contest, not changing their long distance carrier, when they filled out the LOA/entry form.

VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT

15. The above described activities constitute the advertising, offering for sale, lease or rental, or distribution of goods or services, to wit: long distance telephone services, in trade or commerce in the State of Tennessee as defined in Tennessee Code Annotated § 47-18-103.

16. Defendants, acting alone and through and in concert with their agents, representatives, or others acting on their behalf and at their direction, have engaged in deception, misrepresentation, unfair practice, or the concealment, suppression, or omission of material facts, all declared to be unlawful under Tennessee Code Annotated §47-18-101 *et. seq*, in the following ways:

A. Suppressing and concealing from consumers that material fact that, by filling out a contest entry form that they were, in fact, authorizing LDSI to become their new long distance carrier;

B. Engaging in the unfair practice of using a letter of agency as a contest entry form in violation of 47 CFR §64.1150;

C. Misrepresenting that consumers had authorized LDSI to become their new long distance carrier, when, in fact, the written authorization consisted of a forged LOA;

D. Engaging in the unfair act of failing or refusing to implement procedures to verify that the LOAs received by LDSI were not forged and were, in fact, executed by persons with the authority to make PIC changes for the telephone number at issue; and

E. Engaging in the unfair practice of failing to provide refunds to consumers for long distance service charges paid by slammed consumers to LDSI;

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

(1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108 and 47-18-116.

(2) That process issue and be served upon Defendants pursuant to Tenn. Code Ann. § 20-2-201, requiring them to appear and answer this Complaint.

(3) That this Honorable Court adjudge and decree that Defendants have engaged in acts or practices in violation of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.*, as previously set forth.

(4) That this Court permanently enjoin and restrain the Defendants from engaging in deceptive and unfair practices set forth herein and from violating the Tennessee Consumer Protection Act of 1977.

(5) That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses (including statutory interest) suffered by reasons of the alleged violations of the Tennessee Consumer Protection Act.

(6) That the Court adjudge and decree that the Defendants are liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendants' actions, including attorneys' fees, as is provided by Tenn. Code Ann. § 47-18-108(b).

(7) That the Court adjudge and decree that the Defendants pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b).

(8) That all costs in this cause be taxed against Defendants.

(9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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